

STATE BOARD TO REVIEW CLAIMS

MEETING OF SEPTEMBER 12, 1997
Las Vegas, Nevada

ITEM: V.B.

SUBJECT: Resolution to Adopt a Policy Providing Petroleum Fund Coverage for Certain Accidental Releases Resulting from Spills and Overfills from UST Systems.

DISCUSSION: 40 CFR 280.93 requires that owners and operators of petroleum underground storage tanks (USTs) must demonstrate financial responsibility for corrective actions and for the compensation of third parties for bodily injury and property damage caused by accidental petroleum releases associated with the operation of petroleum USTs. 40 CFR 280.93 allows the utilization of a State fund or other state assurance to satisfy these requirements.

40 CFR 280.20 establishes performance standards for UST systems installed on or since September 23, 1988, including requirements for the installation of spill and overfill prevention equipment. 40 CFR 280.21 establishes performance standards for existing UST systems (effective December 22, 1998), including requirements for the installation of spill and overfill prevention equipment.

NDEP currently does not recommend reimbursement for corrective action costs associated with spills and overfills (pursuant to Resolution 93-002, adopted by the State Board to Review Claims at its December 16, 1993 meeting).

The proposed resolution offers a policy that would provide Petroleum Fund coverage for accidental releases associated with the failure of spill and overfill prevention equipment for UST systems installed pursuant to the performance standards established in 40 CFR 280.40 and 40 CFR 280.41.

COMMENTS

RECEIVED: No comments were received as of August 29,
1997.

RECOMMENDATION: Adoption of Resolution No. 97-012 as proposed.

STATE BOARD TO REVIEW CLAIMS

RESOLUTION NO. 97-012

Resolution to Adopt a Policy Providing Petroleum Fund Coverage
for Accidental Releases Resulting from
Spills and Overfills from UST Systems

Whereas, the State Board to Review Claims (hereinafter referred to as the Board) Finds:

1. 40 CFR 280.93(a) states:

"Owners or operators of petroleum underground storage tanks must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks..."

2. 40 CFR 280.92 defines "accidental release" as:

"...any sudden or nonsudden release of petroleum from an underground storage tank that results in a need for corrective action and/or compensation for bodily injury or property damage neither expected nor intended by the tank owner or operator."

3. 40 CFR 280.101 allows utilization of a State fund or other state assurance to satisfy financial responsibility requirements pursuant to 40 CFR 280.93.

4. The State of Nevada Petroleum Fund provides reimbursement for corrective action costs associated with accidental petroleum releases from UST systems (NRS 590.830).

5. Resolution Number 93-002, adopted by the Board at its December 16, 1993 meeting states:

"The corrective action costs for contaminations resulting from spills and overfills will not be eligible for reimbursement from the Petroleum Fund."

The Board adopted the resolution because overfill and spillage were considered to be the result of negligence of the tank owner or product delivery person and, therefore, not releases.

6. Spill and overfill prevention equipment is currently not required for existing UST systems that were installed prior to September 23, 1988.
7. 40 CFR 280.20 requires the installation of spill and overfill prevention equipment on new underground storage tank (UST) systems installed on or after September 23, 1988.
8. 40 CFR 280.21 requires the installation of spill and overfill prevention equipment on existing UST systems on or before December 22, 1998.
9. A discussion regarding Petroleum Fund coverage for remediations performed pursuant to accidental product spill and overfill events occurred at the October 24, 1996 Board workshop. The Board requested that Petroleum Fund staff prepare a policy item for formal discussion at a subsequent meeting.

THEREFORE BE IT RESOLVED:

That the State Board to Review Claims shall allow Petroleum Fund coverage for accidental releases associated with the failure of spill and overfill prevention equipment for UST systems installed pursuant to the performance standards established in 40 CFR 280.20 and 40 CFR 280.21 in the absence of gross negligence as determined by the Board.

That the State Board to Review Claims shall not allow Petroleum Fund coverage for accidental releases associated with product spill and overfill events for UST systems that do not possess spill and overfill prevention equipment installed pursuant to the performance standards established in 40 CFR 280.20 and 40 CFR 280.21.

I, John Haycock, Chairman, do hereby certify that the foregoing

Resolution No. 97-012

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is a full, true, and correct copy of a Resolution adopted by the Nevada State Board to Review Claims on September 12, 1997.

John Haycock, Chairman
State Board to Review Claims